

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of Applications of	)	
	)	IB Docket No. 11-149
New DBSD Satellite Services G.P.,	)	(DA 11-1555)
Debtor-in-Possession, and TerreStar Licensee	)	
Inc., Debtor-in-Possession	)	File No. SES-MOD-20110222-00985
	)	File No. SES-MOD-20110822-00983
For rule waivers and modified ancillary	)	
terrestrial component authority	)	Call signs: E070272, E060430

**PETITION OF SPRINT NEXTEL CORPORATION  
TO CONDITION APPROVAL**

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## SUMMARY

Sprint Nextel supports the development of the underused 2 GHz MSS spectrum, provided that appropriate conditions are established to ensure that key Commission policies such as the *Emerging Technologies* reimbursement doctrine are protected, and that competitive benefits in fact materialize. To ensure that, on balance, the requested waivers of the integrated service rule and other ancillary terrestrial service technical rules will result in public benefits, any grant of those waivers must be conditioned on the satisfaction of certain public interest obligations established in similar prior Commission proceedings. Specifically, the Commission should impose four key conditions on any waiver granted to the Applicants.

First, the Commission should condition the grant of any waivers on DISH's immediate satisfaction of its reimbursement obligation to Sprint Nextel as a new entrant to the 2 GHz MSS spectrum, and as a condition of the licenses and authorizations, including for ATC, which it seeks to assume. Such a condition is consistent with the Commission's past orders, as well as the *Emerging Technologies* doctrine.

Second, to promote competition, the Commission should condition any waiver grant on DISH abiding by specific leasing and data traffic restrictions. In particular, DISH should be required to seek and obtain separate Commission approval before (1) it is permitted to make any of its 2 GHz MSS spectrum available to either of the two largest providers of CMRS or broadband services or (2) it is permitted to provide more than twenty-five percent (25%) of DISH's total traffic on its terrestrial network in a specific area to the two largest providers of CMRS or broadband services whether on a wholesale basis, roaming basis, network sharing agreement or any other arrangement.

Third, for similar reasons, DISH should be required to meet strict terrestrial broadband buildout milestones. DISH should offer coverage to at least 100 million people within 2 years, 9

months of the date of the waiver grant; at least 145 million people within 3 years, 9 months of the date of the waiver grant; and at least 260 million people within 5 years, 9 months of the date of the waiver grant as a condition of its authorization. These buildout milestones, based on the milestones established by the Commission in the LightSquared proceeding, should ensure that public interest benefits in fact result from any grant of the requested waivers.

Fourth, DISH should be required to fulfill additional pro-competitive conditions, such as providing a commercially competitive satellite service, including the requirement that its satellite(s) operate across the entirety of DISH's authorized spectrum; that it will not provide preferential terms to any wholesale customers that offer only single-mode terrestrial-only service; and that it will satisfy reporting requirements offering the Commission information regarding terminal usage and the number of network users.

By imposing these conditions, which are reasonable and grounded in Commission policies, the Commission will preserve its longstanding *Emerging Technologies* cost-sharing doctrine; ensure regulatory parity among MSS/ATC operators; encourage CMRS competition; and accelerate broadband deployment.

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**PETITION OF SPRINT NEXTEL CORPORATION  
TO CONDITION APPROVAL**

Sprint Nextel Corporation (“Sprint Nextel”), by counsel and pursuant to the Commission’s Public Notice of September 15, 2011, DA 11-1555 (the “Public Notice”)<sup>1</sup>, hereby submits its Petition to Condition Approval (“Petition”) in the captioned proceeding.<sup>2</sup> The above-captioned applications (the “Applications”) seek waivers from certain Commission rules as well as license modifications in connection with the ancillary terrestrial component (“ATC”) authority held by New DBSD Satellite Services G.P., Debtor-In-Possession (“New DBSD DIP”), and

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<sup>1</sup> New DBSD Satellite Service G.P., Debtor-in-Possession, and TerreStar Licensee Inc., Debtor-in-Possession, Request for Rule Waivers and Modified Ancillary Terrestrial Component Authority, IB Docket 11-149, Public Notice, DA 11-1555 (rel. Sept. 15, 2011).

<sup>2</sup> Sprint Nextel also submits the Petition pursuant to 47 U.S.C. § 309(d) and 47 C.F.R. § 25.154. Sprint Nextel possesses standing to offer the Petition under the Commission’s “rather generous attitude” toward standing, which allows interested parties to bring to the Commission’s attention matters bearing upon the public interest of which the Commission might not be otherwise aware. *See In the Matter of New DBSD Satellite Services G.P., Debtor-in-Possession, Transferor, New DBSD Satellite Services G.P., Transferee, Transfer of Control of Earth Station and Ancillary Terrestrial Component Licenses and Conforming Modifications to Commission Records*, Order, DA 10-1881, ¶ 6 (September 29, 2010) (citing *Broad. Enters., Inc. v. FCC*, 390 F.2d 483, 485 (D.C. Cir. 1968)). As discussed in Sprint Nextel’s concurrently filed Petition to Condition Approval or to Deny, Sprint Nextel also has standing based on competition issues. *See In the Matter of Applications of DBSD North America, Inc., Debtor-in-Possession; New DBSD Satellite Services G.P., Debtor-in-Possession; Pendrell Corporation; TerreStar Networks Inc., Debtor-in-Possession; and TerreStar License Inc., Debtor-in-Possession; Transferors, and DISH Network Corporation; and Gamma Acquisition L.L.C.; Transferees*, IB Docket 11-150, Petition of Sprint Nextel to Condition Approval or to Deny (filed Oct. 17, 2011) (“Transfer Petition”).

TerreStar License Inc., Debtor-in-Possession (“TSL DIP”) (the “Applicants”).<sup>3</sup> The Applicants have also submitted applications seeking Commission approval for the transfer of control of the licenses and authorizations held by New DBSD DIP to the DISH Network Corporation (“DISH”) and for the transfer of control of the licenses and authorizations held by TSL DIP to Gamma Acquisition L.L.C., a wholly owned, direct subsidiary of DISH (the “Transfer”). Sprint Nextel responds to these applications by separate petition in IB Docket 11-150.<sup>4</sup>

### **INTRODUCTION**

The Applicants request that the Commission waive application of the “integrated service” rule codified in 47 C.F.R. § 25.149(b)(4).<sup>5</sup> The rule requires all authorized ATC operators to offer ATC as a component of an integrated service offering including Mobile Satellite Service (“MSS”) through the provision of dual-mode terminals.<sup>6</sup> The Applicants state that waiver of the integrated service rule would allow DISH (if the Commission consents to the Transfer) to offer single-mode terrestrial terminals to customers who do not want the satellite function provided by dual-mode service.<sup>7</sup> The Applicants also seek a waiver of 47 C.F.R. § 25.149(b)(2), which obligates ATC operators to maintain a spare satellite on the ground and to launch the spare satellite during the first commercially available launch window following the

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<sup>3</sup> See New DBSD Satellite Services, G.P., Debtor-in-Possession, Application for Modification of Ancillary Terrestrial Component Authority, Narrative, IBFS File No. SES-MOD-20110222-00985 (filed Aug 22, 2011) (“New DBSD DIP Application”); TerreStar License Inc., Debtor-in-Possession, Application for Modification of Ancillary Terrestrial Authority, Narrative, IBFS File No. SES-MOD-20110822-00983 (filed Aug 22, 2011) (“TSL DIP Application”).

<sup>4</sup> See Transfer Petition.

<sup>5</sup> New DBSD DIP Application, at 4; TSL DIP Application, at 4.

<sup>6</sup> 47 C.F.R. § 25.149(b)(4).

<sup>7</sup> Public Notice, at 1.

failure of an MSS satellite.<sup>8</sup> In addition, TSL DIP requests the Commission waive six technical requirements governing the operation of ATC in the 2 GHz band, including:

- 47 C.F.R. § 25.252(a)(1)-(3) (base station Effective Isotropic Radiated Power limits);
- 47 C.F.R. § 25.252(a)(5) (limits on base station power flux density in the vicinity of airports);
- 47 C.F.R. § 25.252(a)(8) (base station antenna gain limits and overhead suppression requirements);
- 47 C.F.R. § 25.252(b)(2) (limits on mobile terminal out-of-channel emissions at the edge of each licensee's assignment);
- 47 C.F.R. § 25.252(c)(2) (mobile terminal required signal attenuation for bands adjacent to 2000-2020 MHz); and
- 47 C.F.R. § 25.252(c)(4) (method for measuring mobile terminal out-of-band emissions).<sup>9</sup>

Finally, New DBSD DIP asks the Commission to clarify the out-of-band emission limit measurement standard for ATC base station emissions under 47 C.F.R. § 25.252(a)(1).<sup>10</sup>

As described in Sprint Nextel's Petition to Condition Approval or Deny, filed simultaneously with this Petition in IB Docket 11-150, the Commission should require DISH to immediately fulfill the MSS licensees' reimbursement obligations to Sprint Nextel under existing Commission orders prior to consummating the proposed transaction.<sup>11</sup> Sprint Nextel has been forced to spend years and significant effort pursuing its reimbursement rights against the MSS entrants in numerous forums, often simultaneously.<sup>12</sup> If the proposed transactions are approved,

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<sup>8</sup> 47 C.F.R. § 25.149(b)(2)(ii).

<sup>9</sup> Public Notice, at 2.

<sup>10</sup> New DBSD DIP Application, at 8-9.

<sup>11</sup> Transfer Petition, at 8-12.

<sup>12</sup> *See Improving Public Safety Communications in the 800 MHz Band, et al*, WT Docket No. 02-55, ET Docket No. 00-258, ET Docket 95-18, Report and Order and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd. 7904, 7909, ¶ 11 (2009); *see also Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, ET Docket No. 00-258, ET Docket 95-18, Fifth Report and Order, Eleventh Report and Order,

DISH will be subject to BAS retuning expense reimbursement obligations to Sprint Nextel as both a new entrant to the 2 GHz MSS band, and as a condition of its acquired licenses.<sup>13</sup>

Enforcing the reimbursement obligation to Sprint Nextel, and making it a condition precedent to the subject waiver requests, serves the public interest by ensuring that the Commission's important spectrum-clearing and cost-sharing principles established in the *Emerging Technologies Proceeding* remain viable for future rebanding efforts.<sup>14</sup> DISH should satisfy the regulatory obligations incurred as the prospective license transferee before it receives the benefits afforded by the numerous waivers DISH seeks.

In addition, the Commission should condition the waiver to ensure that projected competition benefits and other public interest benefits in fact occur. While the Commission has waived some of these rules for other MSS licensees,<sup>15</sup> the Commission has never waived all of these rules for one MSS operator in a single proceeding. Just as important, the Commission carefully balanced each waiver request against discrete, measurable public interest benefits

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Sixth Report and Order, and Declaratory Ruling, 25 FCC Rcd. 13874, 13878, ¶ 8 (2010) (remarking that Sprint Nextel and the MSS entrants have “disputed, in multiple forums, their respective cost-sharing responsibilities.”)

<sup>13</sup> Transfer Petition, at 8-12.

<sup>14</sup> See *Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile Satellite Service*, ET Docket No. 95-18, Third Report and Order and Third Memorandum Opinion and Order, 18 FCC Rcd. 26338, 26344-55, ¶¶ 7-10 (2003) (noting that the BAS Relocation was intended to follow principles embodied in the *Emerging Technologies* proceeding). See also *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, ET Docket No. 92-9, First Report and Order and Third Notice of Proposed Rule Making, 7 FCC Rcd. 6886 (1992); Second Report and Order, 8 FCC Rcd. 6495 (1993); Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd. 6589 (1993); Memorandum Opinion and Order, 9 FCC Rcd. 1943 (1994); Second Memorandum Opinion and Order, 9 FCC Rcd. 7797 (1994); *aff'd Ass'n of Public Safety Comm'ns Officials-International, Inc. v. FCC*, 76 F.3d 395 (D.C. Cir. 1996) (collectively, “*Emerging Technologies Proceeding*”).

<sup>15</sup> See *In the Matter of LightSquared Subsidiary LLC, Request for Modification of its Authority for an Ancillary Terrestrial Component*, IBFS File No. SAT-MOD-20101118-00239, Order and Authorization, 26 FCC Rcd. 566, 566, ¶ 1 (2011) (waiving integrated service rule) (“LightSquared Order”); See *In the Matter of New ICO Satellite Service G.P., Application for Blanket Authority to Operate Ancillary Terrestrial Component Base Stations and Dual-Mode MS-ATC Mobile Terminals in the 2 GHz MSS Bands*, Order and Authorization, IBFS File Nos. SES-LIC-20071203-01646, SES-AMD-20080118-00075, and SES-AMD-20080219-00172, 24 FCC Rcd. 171, 196-97, ¶ 69 (2009) (waiving 47 C.F.R. 25.252 technical rules); *In the Matter of Mobile Satellite Ventures Subsidiary LLC, Application for Limited Waiver of On-Ground Spare Satellite Rule*, IBFS File Nos. SAT-MOD-20070523-00073 and SES-MOD-20070523-00072, Memorandum Opinion and Order, 22 FCC Rcd. 20548, 20548, ¶ 1 (2007) (waiving spare ground satellite rule).



designed to yield accelerated broadband deployment, more efficient delivery of broadband services to the public, or both. The Commission accordingly conditioned the waivers on the MSS operator meeting detailed leasing, deployment, performance, and technical obligations.

For instance, the Commission conditioned the licenses of SkyTerra Communications, LightSquared's predecessor in interest, on SkyTerra's commitment to not enter into any spectrum lease agreement with the two largest wireless providers without receiving prior Commission approval.<sup>16</sup> The Commission also limited the amount of data traffic Sky Terra may provide to the two largest wireless providers, without prior Commission consent, to twenty-five percent (25%) of SkyTerra's total terrestrial network traffic in a certain area.<sup>17</sup> Similarly, a key consideration in the Commission's waiver of the integrated service requirement for LightSquared was LightSquared's compliance with strict terrestrial broadband buildout requirements and other public service obligations.<sup>18</sup>

As explained in further detail below, Sprint Nextel requests that any Commission approval of the requested waivers be similarly conditioned on DISH first satisfying its immediate reimbursement obligation to Sprint Nextel and on its assuming equivalent public service obligations to those required of other, similarly situated ATC operators. Conditioning the waivers in this manner will ensure that the public receives benefits commensurate with those that other MSS licensees have promised in other proceedings, and will prevent inequitable regulatory treatment of similarly situated presumptive wireless broadband service providers that received waivers of the same rule provisions.

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<sup>16</sup> See *In the Matter of SkyTerra Commc'ns, Inc., Transferor, and Harbinger Capital Partners Funds, Transferee, Applications for Consent to Transfer Control of SkyTerra Subsidiary, LLC*, IB Docket No. 08-184, Memorandum Opinion and Order and Declaratory Ruling, 25 FCC Rcd. 3059, 3089, ¶ 72 (2010) ("SkyTerra Order").

<sup>17</sup> *Id.*

<sup>18</sup> LightSquared Order, 26 FCC Rcd. at 582-83, ¶ 34.

## DISCUSSION

### **I. THE COMMISSION SHOULD CONDITION ANY GRANT OF THE APPLICATIONS ON DISH IMMEDIATELY MEETING ITS REIMBURSEMENT OBLIGATIONS TO SPRINT NEXTEL**

Sprint Nextel has been seeking the payment of reimbursement costs from the Applicants for many years arising out of Sprint Nextel's successful clearing of Broadcast Auxiliary Services ("BAS") incumbents out of the 2 GHz Band to allow the Applicants to provide MSS.<sup>19</sup> The cost-sharing obligations owed by the Applicants are described in more detail in Sprint Nextel's Petition to Condition Approval or Deny filed simultaneously with this Petition, and this Petition incorporates the arguments made therein by reference.<sup>20</sup> The Commission should expressly condition any waiver sought in the subject Applications on the immediate and complete fulfillment by DISH of the reimbursement obligations DISH would incur either as an assignee of the Applicants' MSS licensees or as a new entrant in the 2 GHz MSS Band.<sup>21</sup> Absent the express continuation (and satisfaction) of the reimbursement obligation, Sprint Nextel would suffer irreparable harm. Moreover, the Commission would be effectively discarding the longstanding cost-sharing and band-clearance policies established in the *Emerging Technologies Proceeding* despite their critical importance to the Commission's effort, articulated in the National Broadband Plan, to make additional spectrum available for wireless broadband services. Licensees will be unwilling to assume future spectrum clearing obligations if they are unsure that later entrants to the band will reimburse the first licensee for its efforts. Conditioning any waiver

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<sup>19</sup> See *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, ET Docket No. 00-258, ET Docket 95-18, Fifth Report and Order, Eleventh Report and Order, Sixth Report and Order, and Declaratory Ruling, 25 FCC Rcd. 13874, 13884, ¶ 8 (2010) (noting that "no cost sharing payments have been made to date").

<sup>20</sup> See Transfer Petition, at 8-10.

<sup>21</sup> See *id.*

grant on DISH's immediate satisfaction of its reimbursement obligations removes this uncertainty and serves the public interest in rapid clearing of encumbered spectrum for new uses.

## **II. SPRINT NEXTEL SUPPORTS EXTENDING THE BENEFITS OF THE WAIVERS TO THE APPLICANTS, PROVIDED ANY GRANT INCLUDES THE CONCOMITANT OBLIGATIONS ADOPTED IN SIMILAR PRIOR COMMISSION PROCEEDINGS**

Sprint Nextel supports competition and development in the 2 GHz MSS spectrum, provided that the Commission's long-standing policies, conditions, and orders continue to be upheld and enforced. The Commission has recognized that demand for mobile broadband services will grow significantly over the next few years.<sup>22</sup> The MSS spectrum currently remains underused, with DBSD providing no commercial MSS and TerreStar's services remaining in the early developmental stages.<sup>23</sup> If granted, the waiver requests would increase flexible use of the 2 GHz Band in accordance with the National Broadband Plan and encourage terrestrial broadband deployment.<sup>24</sup>

The Applicants assert that the integrated service rule "severely limits a provider's ability to enter into arrangements with multiple device and equipment manufacturers, thereby limiting consumer choice and severely limiting business case economics."<sup>25</sup> According to the Applicants, waiver of the integrated service requirement would increase consumer choice and allow DISH to attract enough customers to offer competition in Commercial Mobile Radio Service ("CMRS").<sup>26</sup> DISH indicates it would operate both TerreStar and New DBSD's satellites if the Commission

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<sup>22</sup> See SkyTerra Order, 25 FCC Rcd. at 3086, ¶ 58. See also Omnibus Broadband Initiative, *Connecting America: The National Broadband Plan*, GN Docket No. 09-51, at 76-79 (2010) ("National Broadband Plan").

<sup>23</sup> TerreStar Networks Inc., Debtor-in-Possession; and TerreStar License Inc., Debtor-in-Possession, Transferors, and DISH Network Corporation and Gamma Acquisition L.L.C., Transferees, Consolidated Application for Transfer of Authorizations, IBFS File Nos. SAT-ASG-20110822-00165, SES-ASG-20110822-00992, -00993, -00994, and ITC-ASG-20110822-00279, at 31 (filed Aug. 22, 2011).

<sup>24</sup> See National Broadband Plan, at 87.

<sup>25</sup> New DBSD DIP Application, at 4-5; TSL DIP Application, at 4-5.

<sup>26</sup> New DBSD DIP Application, at 5; TSL DIP Application, at 5.

approves the Transfer.<sup>27</sup> In the event that one satellite fails, DISH believes it could rely on the other satellite to provide continued service. In addition, the Applicants state that waiver of the technical rules codified in 47 C.F.R. § 25.525 would allow DISH to integrate DBSD and TerreStar's MSS services if the Commission consents to the Transfer.

DISH's proposed use of the combined 40 MHz of MSS spectrum in the 2 GHz band can, on balance, promote competition and serve the public interest, provided that appropriate conditions are established and enforced. As a result, Sprint Nextel does not oppose granting the Applications as a means of promoting competition and encouraging mobile broadband service deployment, provided, of course, that first Sprint Nextel is fully reimbursed for clearing BAS incumbents from the subject spectrum as detailed above. If the Commission decides to grant the waiver requests set forth in the Applications, however, it should condition the grants on the satisfaction of public interest obligations similar to those that other MSS operators must satisfy.

**A. Conditions Are Necessary to Promote Competition and Advance the Public Interest**

The Commission's prior proceedings concerning MSS operators demonstrate that conditions must often be imposed on such licensees to promote competition and protect the public interest. In the SkyTerra Order, the Commission noted that the limitations placed on SkyTerra's ability to lease spectrum and provide traffic to the two largest terrestrial providers of CMRS and broadband services insured "that the public interest benefits of [the applications] outweigh any potential harms."<sup>28</sup> The Commission's waiver of the integrated service rule in the LightSquared Order also involved a number of key public interest and competition considerations, notably that LightSquared was required to meet substantial terrestrial buildout

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<sup>27</sup> New DBSD DIP Application, at 7; TSL DIP Application, at 7.

<sup>28</sup> SkyTerra Order, 25 FCC Rcd. 3089, ¶ 73.

obligations.<sup>29</sup> As a condition of its authorization, LightSquared committed to offering coverage to at least 100 million people by the end of 2012, at least 145 million people by the end of 2013, and at least 260 million people by the end of 2015.<sup>30</sup> The Commission concluded that the achievement of these buildout milestones would result in substantial public interest benefits, including (1) expanding the capabilities of traditional MSS offerings, (2) making terrestrial mobile wireless 4G broadband service available to a wider variety of users, and (3) enhancing competition in the terrestrial mobile wireless broadband market by increasing consumer choice among providers.<sup>31</sup>

The Commission further obligated LightSquared to “make available and actively market a commercially competitive satellite service” and to guarantee that its satellites possessed the capability of operating across the entirety of LightSquared’s MSS spectrum.<sup>32</sup> The Commission also required LightSquared to ensure the market availability of commercially competitive ATC services and prohibited the company from offering “preferential terms to customers that offer terrestrial-only service, or otherwise discourage its customers from offering integrated MSS/ATC.”<sup>33</sup> To monitor LightSquared’s operations pursuant to the waiver, the Commission imposed a number of reporting requirements regarding terminal usage and the number of network users.<sup>34</sup> The conditional waiver received by LightSquared “better serve[d] the public

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<sup>29</sup> LightSquared Order, 26 FCC Rcd. at 582-83, ¶ 34.

<sup>30</sup> *Id.* at 582, ¶ 34 (citing SkyTerra Order, 25 FCC Rcd. at 3085, 3088-89, 3098, ¶¶ 56, 72, App. B (Harbinger Business Plan Letter of March 26, 2010 at Attach. 2)).

<sup>31</sup> *Id.* at 582-83, ¶ 34.

<sup>32</sup> *Id.* at 583, ¶ 36.

<sup>33</sup> *Id.* at 583-84, ¶ 36.

<sup>34</sup> *Id.* at 584, ¶ 36.

interest and the goals of the Commission’s MSS/ATC gating criteria . . . than would strict application of the integrated service rule.”<sup>35</sup>

1.      The Commission Should Condition Any Approval on Compliance with Leasing and Data Traffic Restrictions

If the Commission approves the Transfer, grant of the Applications would give DISH a level of flexibility for MSS/ATC similar to, if not greater than, LightSquared’s waiver in the Commission’s prior proceeding. Therefore, the Commission should impose similar conditions to any grant of the Applications to further the public interest by promoting competition in the mobile wireless and broadband markets. The Applicants suggest that the waiver of the integrated service requirement would increase consumer choice and allow DISH to attract enough customers to offer competition in CMRS.<sup>36</sup> To promote competition, DISH must offer sufficient spectrum to all customers, regardless of market size. The Commission should therefore adopt conditions similar to those imposed in the SkyTerra Order and require that DISH seek Commission approval before: (1) it makes its spectrum available to either of the two largest terrestrial providers of CMRS and broadband services, or (2) it provides traffic capacity to the two largest terrestrial providers of CMRS and broadband services that accounts for more than twenty-five percent (25%) of DISH’s total traffic on its terrestrial network in any Economic Area whether on a wholesale basis, roaming basis, network sharing agreement or any other arrangement.<sup>37</sup> As Sprint Nextel demonstrated in its filings with the Commission in support of the SkyTerra Order, the leasing and traffic restrictions serve the public interest by ensuring that (1) SkyTerra’s spectrum would be primarily leased to smaller CMRS and broadband competitors

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<sup>35</sup>      *Id.* at 581, ¶ 29.

<sup>36</sup>      New DBSD DIP Application, at 5; TSL DIP Application, at 5.

<sup>37</sup>      SkyTerra Order, 25 FCC Rcd. at 3089, ¶ 72. The term “Economic Area” is defined as one of “175 licensing regions based on the United States Department of Commerce Bureau of Economic Analysis.” 47 C.F.R. § 90.7.

and (2) that the two largest service providers did not receive a disproportionate amount of SkyTerra's capacity.<sup>38</sup> The Commission imposed similar limitations in proceedings involving other services to ensure enhanced competition in the wireless sector and in telecommunications markets generally.<sup>39</sup> As a result, imposing comparable conditions herein will promote a competitive CMRS and broadband marketplace and allow DISH to satisfy its commitment to increase competition through a "robust and viable MSS/ATC service nationwide."<sup>40</sup>

2. The Commission Should Condition Any Approval on Specific Build-Out Requirements

As valuable 2 GHz MSS frequencies continue to sit idle or significantly underutilized more than a decade after Applicants first received their licenses,<sup>41</sup> the public interest requires that the Commission ensure that DISH uses the MSS frequencies (and any ATC authority it may receive) for the benefit of the public as rapidly as possible. Applicants have indicated that DISH is "prepared to commit to . . . significant measures" to ensure the purpose of the integrated service rule is met, including a commitment to "a realistic terrestrial mobile broadband network

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<sup>38</sup> See *In the Matter of SkyTerra Commc'ns, Inc., Transferor, and Harbinger Capital Partners Funds, Transferee, Applications for Consent to Transfer Control of SkyTerra Subsidiary, LLC*, IB Docket No. 08-184, Opposition of Sprint Nextel Corporation to Petition for Partial Reconsideration of Verizon Wireless, at 11 (filed Apr. 12, 2010).

<sup>39</sup> *Id.* at 12-13 (citing *In the Matter of Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Fifth Report and Order, PP Docket No. 93-253, 9 FCC Rcd. 5532 (1994) (establishing broadband PCS auction limitations), *Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, Second Report and Order, Order on Reconsideration, and Fifth Notice of Proposed Rulemaking, CC Docket No. 92-297, 12 FCC Rcd 12545 (1997) (establishing eligibility restrictions on certain carriers to hold LMDS licenses)).

<sup>40</sup> New DBSD DIP Application, at 10; TSL DIP Application, at 14. The fact that the leasing and traffic limitations will affect non-parties to the waiver request, such as the two largest terrestrial providers of CMRS and broadband services, does not prevent the Commission from adopting these conditions to promote the public interest and encourage competition. See, e.g., *International Settlement Rates*, 12 FCC Rcd 19806 (1997), *aff'd sub nom. Cable & Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 2007).

<sup>41</sup> The Commission initially reserved spectrum for MSS use by DBSD and TerreStar's predecessors in interest in 2001. *ICO Services Ltd. Letter of Intent to Provide Mobile-Satellite Service in the 2 GHz Bands*, IBFS Nos. SAT-LOI-19970926-00163, SAT-AMD-20000612-00107, SAT-AMD-20001103-00155, Order, 16 FCC Rcd. 13762 (2001); *TMI Communications and Company, Ltd. P'ship Letter of Intent to Provide Mobile-Satellite Service in the 2 GHz Bands*, IBFS Nos. SAT-LOI-19970926-00161, SAT-AMD-20001103-00158, Order, 16 FCC Rcd. 13808 (2001).

buildout schedule” to provide MSS/ATC service to millions of Americans.<sup>42</sup> To promote broadband deployment and preserve regulatory parity among MSS providers, DISH should be required to meet the same buildout obligations that the Commission required of LightSquared.<sup>43</sup> Specifically, DISH should offer Long Term Evolution (“LTE”) coverage to at least 100 million people within 2 years, 9 months of the date of grant; at least 145 million people within 3 years, 9 months of the date of grant; and at least 260 million people within 5 years, 9 months of the date of grant as a condition of its authorization.

DISH’s plan to deploy services using a LTE-Advanced air interface need not impede rapid broadband deployment.<sup>44</sup> While the 3rd Generation Partnership Project has finalized LTE Release 8 (“LTE Rel. 8”), LTE Release 10 (“LTE Rel. 10”) is not scheduled for completion until March 2012 and commercial equipment is not likely to become available until at least 2013 or 2014 at the earliest. Fortunately, however, the LTE Rel. 10 standard is intended to be backwards compatible with LTE-Rel. 8 equipment.<sup>45</sup> As a result, DISH can rapidly deploy current-

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<sup>42</sup> See DBSD North America, Inc., Debtor-in-Possession; New DBSD; Satellite Services G.P., Debtor-in-Possession; and Pendrell Corporation, Transferors, and DISH Network Corporation, Transferee, Amendment to Application for Transfer of Control, IBFS File Nos. SAT-AMD-20110822-00164, SES-AMD-20110822-00986, -00987, -00988, -00989, -00990, at 10 (filed Aug. 22, 2011) (the “DBSD Amendment”).

<sup>43</sup> DISH suggests that its build-out conditions could be based on principles such as those derived from the Sprint/Nextel transaction. See DBSD Amendment, at 10-11. Those conditions are not relevant to the current proposed transaction. Unlike the merger of Sprint and Nextel, where the parties confronted an exceptionally challenging multi-year reconfiguration of a heavily encumbered band, the spectrum that DISH would occupy is fully cleared of all incumbents in both downlink and uplink bands.

<sup>44</sup> The 3rd Generation Partnership Project, which has developed the LTE standard, tends to use “LTE-Advanced” as something of a catchall phrase to refer to “LTE Release 10 & beyond.” See, e.g., 3GPP, The Mobile Broadband Standard, available at <http://www.3gpp.org/lte-advanced>. By referring to an “LTE Advanced” deployment, DISH presumably intends to deploy LTE Rel. 10 equipment as opposed to equipment using other, future iterations of the LTE standard that might not become available until considerably after 2012.

<sup>45</sup> See, e.g., Traian Andrei, *An Overview of Long Term Evolution Advanced* (Wash. Univ. of St. Louis May 7, 2010), available at <http://www.cse.wustl.edu/~jain/cse574-10/ftp/lte-adv/index.html>; see also Stefan Parkvall et al., *LTE-Advanced - Evolving LTE towards IMT-Advanced*, in Proc. 68th IEEE Vehicular Technology Conference, Calgary, Canada (Sept. 21-24, 2008), available at [http://www.ericsson.com/res/thecompany/docs/journal\\_conference\\_papers/wireless\\_access/VTC08F\\_jading.pdf](http://www.ericsson.com/res/thecompany/docs/journal_conference_papers/wireless_access/VTC08F_jading.pdf) (“LTE-Advanced should be backwards compatible in the sense that it should be possible to deploy LTE-Advanced in spectrum already occupied by LTE with no impact on existing LTE terminals.”).



generation LTE equipment and upgrade those systems to LTE Rel. 10 (or subsequent releases) later. Even if LTE-Advanced does not fully meet the expectation of backward-compatibility with LTE-Rel. 8 equipment, however, the Commission should not allow the valuable 2 GHz MSS spectrum to remain fallow for yet another three or more years. The public interest benefit of rapid deployment of broadband service to the public outweighs any interest DISH may have in withholding service to minimize expenses while awaiting the development of an improved technical standard that may not be available for commercial deployment for several more years. DISH should deploy broadband services on a timely basis to the public as a condition of any waiver grant.

3. The Commission Should Impose Additional Pro-Competition Conditions

In the LightSquared Order, the Commission also required LightSquared to “make available and actively market a commercially competitive satellite service” and to guarantee that its satellites possessed the capability to operate across the entirety of LightSquared’s MSS spectrum.<sup>46</sup> The Commission further required LightSquared to ensure the market availability of commercially competitive ATC services and prohibited the company from offering “preferential terms to customers that offer terrestrial-only service, or otherwise discourage its customers from offering integrated MSS/ATC.”<sup>47</sup> Similar conditions are necessary and appropriate here, particularly given DISH’s anticipation of offering single-mode terrestrial terminals to customers who do not want the satellite function provided by dual-mode service.<sup>48</sup> Applicants claim that DISH is “committed to securing the opportunity to deploy a terrestrial broadband network” and

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<sup>46</sup> LightSquared Order, 26 FCC Rcd. at 583, ¶ 36.

<sup>47</sup> *Id.* at 583-84, ¶ 36.

<sup>48</sup> Public Notice, at 1.

that it will also “provide substantial satellite service.”<sup>49</sup> Adopting related conditions based on the LightSquared Order will ensure not only that such plans and commitments become reality, but also that satellite service and dual-mode MSS/ATC become viable, competitive commercial services and that the spectrum is fully utilized. At a minimum, the Commission should adopt the following additional conditions based on the LightSquared Order:

- DISH shall make available and actively market a commercially competitive satellite service;
- DISH shall ensure that its satellite(s) are collectively capable of operating across the entirety of its combined MSS S-Band spectrum;
- DISH shall offer commercially competitive satellite/terrestrial service offerings with an integrated unit rate that includes a substantial quantity of satellite capacity; and
- DISH shall not offer preferential terms to wholesale customers that offer only single-mode terrestrial-only service, or otherwise discourage its customers from offering integrated MSS/ATC.<sup>50</sup>

Absent the immediate fulfillment of these conditions, a significant and foreseeable risk exists that the 2 GHz MSS spectrum would continue to lie fallow to the detriment of the public. Finally, to ensure equitable treatment of all ATC operators and advance the public interest, the Commission should establish reporting requirements for DISH. As in the LightSquared Order, the Commission should require DISH to submit semi-annual filings identifying the number of terminals on, and active users of, its proposed network that fall under each of the following three categories: MSS-only, MSS/ATC, and terrestrial only.<sup>51</sup> These reporting requirements will help

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<sup>49</sup> DBSD Amendment, at 9.

<sup>50</sup> See LightSquared Order, 26 FCC Rcd. at 583-84, ¶ 36. Sprint Nextel recognizes that some of the other conditions imposed in the LightSquared Order specifically concerned MSS/ATC operations in the L-Band. Sprint Nextel only requests the Commission impose those conditions from the LightSquared Order which can be applied to the S-Band operations at issue. Sprint Nextel further acknowledges that the applicability of some of the conditions described in this Petition may depend on whether DISH plans to offer a wholesale or retail network, or a combination of service offerings.

<sup>51</sup> *Id.*

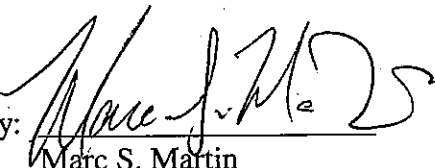
ensure compliance with the numerous conditions and permit timely and effective enforcement against DISH if it ceases to meet the requirements.<sup>52</sup>

### CONCLUSION

For the foregoing reasons, Sprint Nextel respectfully requests that the Commission condition any approval of the Applications upon the Applicants meeting certain public interest obligations established in similar prior Commission proceedings.

Respectfully submitted,

Sprint Nextel Corporation

By:   
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October 17, 2011

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<sup>52</sup> *Id.* at 583, ¶ 35 (noting that reporting conditions allowing the Commission to monitor key indicators ensure that outcomes consistent with the purposes of the gating requirements and public interest actually materialize, and if they do not the Commission may take further action to modify LightSquared's ATC authority).

**AFFIDAVIT**

DISTRICT OF COLUMBIA                    )  
  )  
CITY OF WASHINGTON                    )       SS:

Trey Hanbury, being duly sworn, deposes and says:

1. I am a Director of Government Affairs of Sprint Nextel Corporation.
2. I have read the foregoing Petition to Condition Approval the approval of certain waivers of the Commission's rules related to the Applicants' ATC authority.
3. I have personal knowledge of the facts stated therein sufficient to demonstrate that Sprint Nextel Corporation is a party in interest and sufficient to demonstrate that any approval of the Applications should be conditioned upon the satisfaction of certain public interest obligations established in similar prior Commission proceedings.
4. The facts as set forth in the Petition, other than those of which official notice may be taken, are true and correct to the best of my knowledge, information and belief.
5. I declare under penalty of perjury that the foregoing is true and correct.

**[SIGNATURE PAGE FOLLOWS]**

By: \_\_\_\_\_



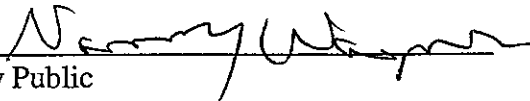
Trey Hanbury  
Sprint Nextel Corporation

October 17, 2011

District of Columbia:

Subscribed to and affirmed by Trey Hanbury before me this 17 day of October, 2011.

\_\_\_\_\_  
Notary Public



My Commission Expires:

**My Commission Expires**  
June 14, 2012


**CERTIFICATE OF SERVICE**

I, J. Bradford Currier, hereby certify that on this 17th day of October, 2011, copies of the foregoing Petition of Sprint Nextel Corporation to Condition Approval were also served upon the following parties:

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New DBSD Satellite Services, G.P.,  
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J. Bradford Currier